

BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Petition for
Reinstatement Against:

MARK BARRY ZWEIFACH,

Petitioner.

Case No. 800-2016-027831

OAH No. 2018070058

**DECISION AFTER
NON-ADOPTION**

Administrative Law Judge (ALJ) Vallera J. Johnson, Office of Administrative Hearings, State of California, heard this matter in San Diego, California, on January 23, 2018.

Joseph F. McKenna III, Deputy Attorney General, represented the people of the State of California.

David M. Balfour, Attorney at Law, of the law firm of Nossaman LLP, represented Mark Barry Zweifach.

The matter was submitted on January 23, 2018. Panel B (Panel B) of the Medical Board of California (Board or board) declined to adopt the decision proposed by ALJ Johnson and on May 2, 2018, issued an Amended Order of Non-Adoption of Proposed Decision and afforded the parties the opportunity for written argument. Next, the Panel fixed the date of oral argument for July 26, 2018.

The Panel, having read and considered the administrative record and the written arguments submitted by the parties, and having heard oral argument, hereby makes and enters the following as its decision in this matter.

FACTUAL FINDINGS

License History

1. On August 9, 1982, the Board, issued Physician's and Surgeon's Certificate No. G 48626 (certificate) to Mark Barry Zweifach (petitioner).

Prior Disciplinary History

2. On September 16, 2008, petitioner signed a Stipulation for Voluntary Suspension of License in case number 10-07-188130. This Stipulation for Voluntary Suspension cited a pending investigation against him by the San Diego Police Department for “conduct which if proven would constitute unprofessional conduct and grounds for discipline of his Physician’s and Surgeon’s Certificate.”

3. On September 24, 2010, the board’s executive officer filed Accusation, Case No. 10-07-188130, alleging that petitioner engaged in unprofessional conduct in violation of Business and Professions Code section 2234.

On October 27, 2011, petitioner signed a Stipulated Surrender of License and Disciplinary Order. On December 6, 2011, the board adopted the Stipulated Surrender of License and Order. On December 13, 2011, the board’s decision became effective.

Petition for Penalty Relief

4. On October 20, 2016, nine years after the misconduct that resulted in discipline of his license, petitioner signed a Petition for Penalty Relief, seeking reinstatement of his certificate. Attached to his Petition were the following documents.

- His narrative statement and personal statement addendum,
- Eleven letters of support,¹
- Evidence of completion of AMA PRA Category 1 Credits, and
- Certificate of Completion of the Professional Boundaries Program, issued on October 26, 2008.

Flor Flatley, a special investigator with the Department of Investigation, Health Quality Investigation Unit, conducted an investigation of the petition. Her investigation included an interview of petitioner as well as an interview of two of the three physicians who submitted letters in support of the petition.

5. Petitioner described his education, training and experience prior to discipline of his license.

In 1971, he obtained a Bachelor of Arts degree in psychology and theater arts from Antioch College. In 1974, petitioner obtained a Master of Science degree in clinical psychology from California State University – San Francisco. In 1981, he obtained his medical degree from University of California - Irvine.

Between 1981 and 1982, petitioner completed a residency in internal medicine; between 1982 and 1984, he completed a residency in psychiatry. Between 1983 and 1984, he

¹ Two of the letters were signed by the same person.

completed a fellowship in geriatric psychiatry. In 1988, he was board certified in psychiatry; in 1992, he added the qualification in geriatrics.

Between 1985 and 1986, while in Vallejo, petitioner was a staff psychiatrist at Kaiser Permanente Medical Center; in addition, he was the medical director of Hillhaven Alameda Alzheimer's Unit. Between 1986 and 1989, petitioner was the supervising psychiatrist, Senior Evaluation and Treatment Unit, San Diego County Mental Health Services. Between 1987 and 1990, petitioner had a private practice. Between 1990 and 2007, petitioner was a staff psychiatrist and partner at Southern California Permanente Medical Group in San Diego. Between 1986 and 2007, petitioner was an assistant clinical professor in the Department of Psychiatry at the University of California – San Diego School of Medicine. In addition to the foregoing, he had extensive experience in psychiatry.

Prior to ceasing practice in 2007, petitioner had a practice in psychiatry with a subspecialty in geriatrics. About half his patients were geriatric and half were not. At no time has petitioner provided medical care to children.

6. Petitioner has a sex addiction and an addiction to internet pornography. He testified that he realized that he had the addiction during the 1990s with the advent of the computer. In or about 2003, he contacted Michael Maher, a therapist, for treatment. Between 2003 and 2007, he received treatment, initially weekly, then bi-weekly and thereafter monthly until he ceased therapy when he believed he was in recovery. Also, at Mr. Maher's suggestion, petitioner began attending Sexaholics Anonymous (SA)² and continued to do so until 2007. In 2003 while obtaining treatment from Mr. Maher, petitioner attended SA two to three times a week; at that time, he did not work the program thoroughly.

In 2007, petitioner relapsed and accessed websites from his home computer. At the time, he had a filter on his computer; but, he disabled the filter and subscribed to a pornographic site. Then, while at work, on his Kaiser issued computer, petitioner intended to unsubscribe from the pornographic website; instead, on occasions in July, August and September 2007, while at work, on his Kaiser issued computer, petitioner viewed inappropriate images, including child pornography. According to petitioner, a contributing factor to his acting-out behavior was the instability of his marriage. He was separated from his wife who was having an extramarital affair, and he was "extremely distressed and upset." This kind of ongoing stress was fertile ground for addictive behavior to come to the surface, though no excuse or justification for his misconduct. That marriage ended in divorce; for the past five years, he has been in a "healthy committed relationship" with his fiancée.

After being notified that staff (of Kaiser Foundation Hospital – San Diego) had learned that material (considered to be child pornography) was found on his office computer in October 2007, petitioner resigned from his position with Southern California Permanente Medical Group, resigned clinical privileges at KFH - San Diego and resigned his membership and clinical privileges from Sharp Mesa Vista Hospital.³ He has not practiced medicine since

² Sexaholics Anonymous is a 12-step program. Petitioner explained that the only requirement is the participant's desire to cease compulsive sexual behavior.

³ No evidence was offered to establish that his resignation from Sharp Mesa Vista Hospital was due to any adverse issues which occurred at Sharp Mesa Vista Hospital

October 2007.

7. Petitioner described his evidence of rehabilitation.

After engaging in the conduct that resulted in termination of his employment, voluntary suspension of and ultimately revocation of his license, petitioner undertook rehabilitation efforts for his sex and internet pornography addictions.

- Since commencing treatment with Mr. Maher, petitioner has maintained a continuous relationship with him. Mr. Maher moved to Idaho in 2004. Between 2004 and the 2007 incident, petitioner and Mr. Maher communicated at least once a month and met in person when Mr. Maher returned to California, which was typically once or twice a year. Mr. Maher has acted as a case manager and advisor regarding petitioner's treatment and recovery. Petitioner described him as a "super sponsor."

After the October 2007 incident, petitioner immediately called Mr. Maher and disclosed everything about the incident. At all times, petitioner has followed Mr. Maher's recommendations.

- Between November 27, 2007, and January 8, 2008, in accordance with Mr. Maher's recommendation, petitioner voluntarily underwent in-patient rehabilitation treatment for sex addiction at Keystone Center, a nationally known treatment center for sex addicts, in Pennsylvania. It was an intensive program. For two weeks, he could not leave the site; no cellular telephones were allowed; he had individual therapy several times a week and attended group meetings as well as community meetings.
- Following his completion of the residential treatment, petitioner followed the recommendations of Keystone staff. Upon his return to San Diego, he began treatment with Bill Martin, a licensed marriage and family therapist and a certified sex addiction therapist. For over 20 years, Mr. Martin's practice has focused on helping people with addictions, principally sex addictions. Petitioner saw him regularly between January 15, 2008, and May 1, 2012, completing 58 sessions during that time. Mr. Martin was aware that petitioner attended the 12-step programs, either SA or Sex Addicts Anonymous, and petitioner's role in these programs. Petitioner terminated treatment with Mr. Martin in 2012 with his goals met for therapy at that time; he continued 12-step attendance, which Mr. Martin and petitioner believe is a life-long commitment. In Mr. Martin's opinion, petitioner is at "reduced risk with a low possibility of repeating offensive behavior." In Mr. Martin's opinion, petitioner is "not a danger to society" if his license is reinstated.
- In October 2007 petitioner returned to therapy with Judith Matson, Ph.D., whom he had seen for relationship issues in 1998. At that time, petitioner continued regular therapy with Dr. Matson (first weekly and then bi-weekly) for four years. At that time, his addiction to pornography was a minor focus, and he had strategies for maintaining sobriety that seemed

adequate to Dr. Matson.

When he returned for therapy with Dr. Matson in October 2007 and during the next two years, his addiction was their primary focus. At that time, petitioner attended the six-week treatment program at Keystone. In Dr. Matson's opinion, petitioner "developed a strong program for maintaining sobriety and committed to Sexaholics Anonymous, attending meetings, working with a sponsor, being a sponsor, volunteering for service positions and attending numerous conferences." Dr. Matson has continued to see petitioner intermittently, supporting his work with Mr. Martin (an addiction specialist) and his participation in SA and SAA. She is impressed with petitioner's "persistent dedication to achieving a balance in his life that includes emotional health and sobriety, and he will do what he needs to do in order to maintain it." In Dr. Matson's opinion, petitioner is in solid recovery from his addiction and offers no threat to society; he should be allowed to resume his medical practice.

- He received treatment from John Milner, M.D., one of the founding physicians of addiction treatment for alcoholism in San Diego. In his letter, Dr. Milner noted that at the time of the license discipline, petitioner fell into deep despair but obtained the best treatment available in the country and followed recommendations from Keystone staff and attended appropriate anonymous self-help fellowships. "The shame and guilt produced by the incident and loss of his license was so profound in this 'perfectionist' that he had not the ego strength to consider re-apply [*sic*]. However, through his dedicated work with SLA, he has developed a re- birth of hope and continues to be abstinent requiring rigid boundaries in regards[*sic*] internet world." According to Dr. Milner, the development of these boundaries has allowed petitioner to be open to filing the petition for reinstatement and "complete the final emotional and financial entanglements with his now ex-wife." In Dr. Milner's opinion, petitioner has followed his treatment plan for several years, has developed and adhered to his boundaries, "the call of the internet has radically reduced," and he possesses a solid relapse prevention plan; he is in stable remission from his addictive disorder. Dr. Milner believes that petitioner is of "no risk to the public." Therefore, he supports reinstatement of petitioner's certificate to practice medicine.
- When he returned from Keystone, petitioner continued attending SA meetings. During the first 90 days, he attended 90 meetings. He has worked on the steps, held leadership positions, had a sponsor and sponsored others. Approximately three years ago, he transferred to Sex Addicts Anonymous (SAA) because he began a relationship with his fiancée; SA does not permit sexual relationships outside of marital relationships, while SAA permits sex within a committed relationship. Petitioner serves as secretary of the weekly SAA meeting, for which he organizes speakers, scheduling, greetings and other logistics. He intends to remain involved in SAA.

- He acknowledged that he has relapsed on at least two if not three occasions; in each case, he notified his sponsor and rededicated himself to his recovery program.
- He expressed remorse for his misconduct. He recognized and acknowledged that pornography is not a victimless act; it perpetuates an exploitative industry and harms those involved.
- During his board interview, petitioner explained what he would do differently than the conduct that resulted in dismissal from his employment and discipline of his license. He would have a filter on his home computer; instead of acting out, he would call his sponsor or someone else in the 12-step program; perhaps, be more aware of the stress he is under; perhaps intervene earlier, and do a better job of anticipating what can happen.
- He described his available supports.
- Between October 26 and 28, 2008, petitioner completed a Professional Boundaries Program.
- Between 2007 and 2011, petitioner volunteered on a weekly basis at San Diego Hospice, Alzheimer's Association, Second Chance and McAlister Institute. An inaccurate story was published on the internet that stated that petitioner was required to register as a sex offender; as a result of this story, petitioner was required to cease this volunteer work.
- Between 2011 and 2015, petitioner was the care provider for his ailing mother until she passed away.
- Petitioner has participated in theater, both acting and directing. Some opportunities have been impacted by publicity regarding the October 2007 incident.

8. In addition to his letter in support of the petition, Mr. Maher testified as a witness in this proceeding.

Prior to his retirement, for over 20 years, Mr. Maher was an addiction clinician as well as a minister. He holds a master's degree in clinical psychology with a subspecialty in addiction.

He briefly described his experience. He moved to San Diego in 1980. Between 1983 and 1995, he worked in chemical abuse treatment programs. In 1995, he established a private practice, providing treatment for addiction. Among other things, his experience included serving as a board probation monitor, following physicians in the board's diversion program (when it existed) and providing treatment for other addicted professionals, such as nurses and attorneys.

Overall, his testimony was consistent with petitioner's testimony regarding timelines and their relationship. However, he provided insight into petitioner's progress, growth and relapses.

Mr. Maher recalled that he began treatment with petitioner in or about 2000. However, he admitted that he did not have his notes with him, and it may have been another date. Mr. Maher confirmed that petitioner notified him immediately after the (October 2007) incident that led to his resignation and ultimately his license discipline.

After the (October 2007) incident, in Mr. Maher's opinion, it was necessary for petitioner to get away from the temptation and Mr. Maher suggested Keystone; it was a good program, and he explained the reasons that it was. During the time that petitioner was in Keystone, Mr. Maher was in touch with the staff of Keystone and discussed petitioner's progress on two or three occasions. He spoke to petitioner once while he was at Keystone. According to the staff, petitioner was doing fine. Mr. Maher was fully aware of the treatment petitioner received after returning to San Diego, including his involvement in self-help groups. Mr. Maher explained that self-help groups are important because they provide accountability; the members monitor each other.

Mr. Maher described his impression of petitioner's emotions after his resignation from Kaiser. At that time, he recalled that petitioner "struggled with this"; it was serious because it occurred at work, and the fact that it involved children amplified the situation.⁴ Petitioner had intense feelings of shame, guilt and embarrassment, initially more from ego, i.e., how it looked, what would people think. Since 2008, Mr. Maher has observed the most growth in petitioner's level of acceptance; petitioner has acknowledged that the difficulties he experienced had to do with him and no one else. Further, he takes responsibility for his recovery.

In Mr. Maher's opinion, petitioner is in recovery. He explained the distinction between abstinence and being in recovery. Though they both look the same, those who simply abstain are less authentic; generally, these individuals are not comfortable; so, they fight "at every turn"; they are not comfortable being around; those in recovery are more "authentic"; they are open, "above board" and willing to respond to questions; they work toward maintaining recovery, including attending self-help groups.

In Mr. Maher's opinion, petitioner is not a danger to himself or others and is safe to practice medicine; seven or eight years ago, Mr. Maher did not have this opinion; he did not think it was practical for petitioner to practice; however, he has watched petitioner "make forward movement"; now, he believes petitioner is ready. Mr. Maher supports reinstatement of petitioner's license with restrictions/conditions, including not treating children, monitoring his behavior and his computer and requiring that he check in with his therapist.

Mr. Maher was aware that petitioner had lapsed on two separate occasions but is not

⁴ In Mr. Maher's opinion, regarding the addiction, the fact that it involved child pornography was not relevant; the treatment was the same for sex addiction. Mr. Maher described a substance abuse situation to clarify; if the addict used heroin or cocaine, it was not relevant; the treatment was the same. However, viewing child pornography has other possible ramifications, such as legal aspects.

aware of any lapse that occurred recently (within the last 18 months). Sometimes when lapses occur, the addict denies or attempts to hide it; if that is the case, the lapse is worse. That is not what occurred in petitioner's case. After each lapse, petitioner told Mr. Maher immediately, acknowledged the lapse and got back into the recovery program. Mr. Maher views lapse as the nature of the illness of addiction. As a result, Mr. Maher's opinion did not change; petitioner is safe to practice.

9. Petitioner provided letters of support from William Power, M.D., and Harvey Peskin, Ph.D. In addition, Dr. Power testified as a witness in this proceeding.

- Dr. Power and petitioner attended medical school together, have known each other at least since 1977 and have maintained their relationship since that time. Both men are psychiatrists. Dr. Power considers petitioner to be a highly respected colleague as well as a close friend. Dr. Power has been previously disciplined by the board for boundary violations. Petitioner and Dr. Power communicate frequently and meet at least once or twice a year. During more difficult times, they communicate more frequently. He is aware of petitioner's addictions, employment and license discipline and efforts at recovery. In his opinion, petitioner's "past commitments as well as current and future efforts will ensure the necessary safeguards and accountability that are a part of his ongoing recovery process." Dr. Power supports reinstatement of petitioner's certificate to practice medicine.
- Harvey Peskin, Ph.D., submitted two letters in support of reinstatement of petitioner's license, one written in 2011 and the other in 2016. Petitioner could not explain the reason that there were two letters from Dr. Peskin. Dr. Peskin was petitioner's professor during his master's degree program in psychology at San Francisco State University. They have maintained a relationship since that time. Dr. Peskin was aware of petitioner's addiction and his efforts to achieve and maintain recovery. He supports reinstatement of petitioner's certificate to practice medicine.

10. Petitioner provided a letter of support from a friend and co-sponsor in SAA. He has known petitioner for three years and supports petitioner's testimony about his involvement in SAA, his commitment to sobriety and therefore reinstatement of his license.

11. Petitioner provided three letters from physicians licensed by the board, signed under penalty of perjury, who support his petition for reinstatement.

Lisa E. Heikoff, M.D., and Radharani Gattu, M.D., are former colleagues of petitioner while he was at Kaiser and have known petitioner since 1990. After each submitted her letter, the board's investigator contacted Doctors Heikoff and Gattu and provided each with a copy of the disciplinary documents and spoke to them. After reviewing the disciplinary documents, neither changed the opinion stated in her letter.

- In her letter, Dr. Heikoff described her credentials, her professional relationship with petitioner, and his role and reputation at Kaiser, specifically in geriatric psychiatry. She has not observed the behavior that resulted in

discipline of his license. She believes that he has completed the required treatment and is safe to practice medicine.

- In her letter, Dr. Gattu stated that she has the utmost respect for petitioner “as a friend and esteemed colleague. He is highly respected by his colleagues and I know his patients loved him.” Further, she stated, if he returns to practice, he would be an asset to the community, particularly the underserved population of geriatrics.
- The third letter was from Dr. Milner, a psychiatrist who provided treatment for petitioner as discussed above. Prior to providing treatment to petitioner, he was aware of petitioner as a psychiatrist/colleague in the community and “the high level of respect and confidence in his ability” as a practicing psychiatrist in the Department of Psychiatry at Kaiser. He supports reinstatement of petitioner’s certificate (Finding 7).

12. Petitioner described his efforts to remain current regarding his medical knowledge. Since 2007, annually, among other things, he has completed 30 continuing medical education courses, has attended a UCSD Alzheimer’s conference and read journals.

13. If his license is reinstated, petitioner intends to resume practice in the area of geriatric psychiatry, a field of special interest.

LEGAL CONCLUSIONS

Relevant Statute and Regulation

1. Business and Professions Code section 2307 states, in part:
 - (a) A person whose certificate has been surrendered while under investigation or while charges are pending or whose certificate has been revoked or suspended or placed on probation, may petition the board for reinstatement or modification of penalty, including modification or termination of probation.
 - (b) The person may file the petition after a period of not less than the following minimum periods have elapsed from the effective date of the surrender of the certificate or the decision ordering that disciplinary action:
 - (1) At least three years for reinstatement of a license surrendered or revoked for unprofessional conduct, except that the board may, for good cause shown, specify in a revocation order that a petition for reinstatement may be filed after two years.

[¶] . . . [¶]

(c) The petition shall state any facts as may be required by the board. The petition shall be accompanied by at least two verified recommendations from physicians and surgeons licensed in any state who have personal knowledge of the activities of the petitioner since the disciplinary penalty was imposed.

(d) . . . The board may assign the petition to an administrative law judge designated in Section 11371 of the Government Code. After a hearing on the petition, the administrative law judge shall provide a proposed decision to the board

(e) . . . [T]he administrative law judge hearing the petition may consider all activities of the petitioner since the disciplinary action was taken, the offense for which the petitioner was disciplined, the petitioner's activities during the time the certificate was in good standing, and the petitioner's rehabilitative efforts, general reputation for truth, and professional ability. . . .

[¶] . . . [¶]

2. California Code of Regulations, title 16, section 1360.2, states:

When considering a petition for reinstatement of a license, certificate or permit holder pursuant to the provisions of Section 11522 of the Government Code, the division or panel shall evaluate evidence of rehabilitation submitted by the petitioner considering the following criteria:

(a) The nature and severity of the act(s) or crime(s) under consideration as grounds for denial.

(b) Evidence of any act(s) or crime(s) committed subsequent to the act(s) or crime(s) under consideration as grounds for denial which also could be considered as grounds for denial under Section 480.

(c) The time that has elapsed since commission of the act(s) or crime(s) referred to in subsections (a) or (b).

[¶] . . . [¶]

(e) Evidence, if any, of rehabilitation submitted by the applicant.

Burden and Standard of Proof

3. In a proceeding to restore a disciplined professional license, the burden rests on a petitioner to prove that he has rehabilitated himself and that he is entitled to have the license restored. (*Flanzer v. Board of Dental Examiners* (1990) 220 Cal.App.3d 1392, 1398.)

4. A person seeking reinstatement must present strong proof of rehabilitation and a sufficient showing of rehabilitation to overcome the board's former adverse determination. The standard of proof is clear and convincing evidence. (*Hippard v. State Bar of California* (1989) 49 Cal.3d 1084, 1092-1093.)

Evaluation

5. Prior to discipline of his license by the board, petitioner had been licensed for 16 years. He is a sex addict and is addicted to pornography. His license was disciplined because he viewed pornography at work. He has not practiced medicine since October 2007.

The first issue is whether petitioner has complied with the requirements of Code section 2307. Assuming he has, the next issue is whether he is rehabilitated, considering the criteria set forth in the foregoing statute as well as California Code of Regulations, section 1360.2.

6. Petitioner complied with the requirements set forth in Code section 2307.

- It has been more than 10 years since petitioner engaged in the misconduct that resulted in revocation of his license.
- Petitioner provided letters from three physicians licensed to practice in the State of California who had knowledge of his reputation as a physician; over the years, each physician has had contact with petitioner, had knowledge of his misconduct and efforts at rehabilitation. These physicians support reinstatement of his license. The board's investigator verified the letters from Doctors Heikoff and Gattu.

7. Petitioner provided significant evidence of rehabilitation. In addition to his own statements and testimony, he provided letters from therapists, from personal friends as well as an individual who participates in SAA with him. Along with the foregoing, he provided the testimony of Mr. Maher and Dr. Powell. Among other things, these individuals were knowledgeable of his addiction and progress in recovery. Dr. Maher's testimony and opinion were trustworthy and reliable because they were based on his extensive education, experience and knowledge of petitioner and involvement in his treatment over the past 13 years or more. He was candid and honest. Based on the foregoing, his opinion was persuasive. Considering the evidence, it was established that it would not be contrary to the public interest to reinstate petitioner's certificate on terms and conditions.

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ORDER

I. The Petition to Reinstate Physician's and Surgeon's Certificate No. G 48626 of Mark Barry Zweifach is granted.

II. Physician's and Surgeon's Certificate No. G 48626 issued to Mark Barry Zweifach is reinstated, revoked and placed on probation for five years on the following terms and conditions.

A. Clinical Competence Assessment Program (Condition Precedent)

Within 60 calendar days of the effective date of this Decision, petitioner shall enroll in a clinical competence assessment program approved in advance by the board or its designee. Petitioner shall successfully complete the program not later than six months after his initial enrollment, unless the board or its designee agrees in writing to an extension of that time.

The program shall consist of a comprehensive assessment of petitioner's physical and mental health and the six general domains of clinical competence as defined by the Accreditation Council on Graduate Medical Education and American Board of Medical Specialties pertaining to petitioner's current or intended area of practice. The program shall take into account data obtained from the pre-assessment, self-report forms and interviews, and the Decision (Petition for Reinstatement), Decision (Accusation), Accusation, Stipulation for Voluntary Suspension of License, and any other information that the board or its designee deems relevant. The program shall require petitioner's on-site participation, for a minimum of three and no more than five days, as determined by the program for the assessment and clinical education evaluation. Petitioner shall pay all expenses associated with the clinical competence assessment program.

At the conclusion of the evaluation, the program will submit a report to the board or its designee which unequivocally states whether petitioner has demonstrated the ability to practice safely and independently.

Based on petitioner's performance on the clinical competence assessment, the program will advise the board or its designee of its recommendation(s) for the scope and length of any additional educational or clinical training, evaluation or treatment for any medical condition or psychological condition, or anything else affecting petitioner's practice of medicine. Petitioner shall comply with the program's recommendation.

Petitioner shall not practice medicine until he has successfully completed the program, and the board or its designee has so notified him in writing.

B. Psychiatric Evaluation (Condition Precedent)

Within 30 calendar days of the effective date of this Decision, petitioner shall submit to the board or its designee for prior approval the name and qualifications of a California-licensed board certified psychiatrist or a licensed psychologist who has a doctoral degree in psychology and at least five years of postgraduate experience in the diagnosis and treatment of sex addiction. Upon approval, petitioner shall undergo and continue psychotherapy treatment, including any modifications to the frequency of psychotherapy, until the board or its designee deems that no further psychotherapy is necessary.

The psychotherapist shall consider any information provided by the board or its designee and any other information the psychotherapist deems relevant and shall furnish a written evaluation report to the board or its designee. Petitioner shall cooperate in providing the psychotherapist any information and documents that the psychotherapist may deem pertinent.

Petitioner shall have the treating psychotherapist submit quarterly status reports to the board or its designee. The board or its designee may require petitioner to undergo psychiatric evaluations by a board-appointed board certified psychiatrist. Prior to the completion of probation, if petitioner is found to be mentally unfit to resume the practice of medicine without restrictions, the board shall retain continuing jurisdiction over petitioner's license and the period of probation shall be extended until the board determines that petitioner is mentally fit to resume the practice of medicine without restriction. Petitioner shall pay the cost of the psychiatric evaluations and the psychotherapy.

Petitioner shall not engage in the practice of medicine until he is notified in writing by the board or its designee that he is psychiatrically fit to practice safely.

C. Prohibited Practice

During the probationary period, petitioner is prohibited from treating minors (children under the age of 18 years). After the effective date of this Decision, all patients being treated by petitioner shall be notified that petitioner is prohibited from treating minors. All new patients must be provided this notification at the time of the initial appointments.

Petitioner shall maintain a log of all patients to whom the required oral notification was made. The log shall contain the: (1) patient's name, address and telephone number; (2) patient's medical record number, if available; (3) full name of the person making the notification; (4) date the notification was made; and (5) description of the notification given. Petitioner shall keep this log in a separate file or ledger, in chronological

order; shall make the log available for immediate inspection and copying on the premises, at all times, during business hours by the board or its designee; and shall retain the log for the probationary term.

D. Psychotherapy

Within 60 calendar days of the effective date of this Decision, petitioner shall submit to the board or its designee for prior approval the name and qualifications of a California-licensed board certified psychiatrist or a licensed psychologist who has a doctoral degree in psychology and at least five years of postgraduate experience in the diagnosis and treatment of sex addiction. Upon approval, petitioner shall undergo and continue psychotherapy treatment, including any modifications to the frequency of psychotherapy, until the board or its designee deems that no further psychotherapy is necessary.

The psychotherapist shall consider any information provided by the board or its designee and any other information the psychotherapist deems relevant and shall furnish a written evaluation report to the board or its designee. Petitioner shall cooperate in providing the psychotherapist any information and documents that the psychotherapist may deem pertinent.

Petitioner shall have the treating psychotherapist submit quarterly status reports to the board or its designee. During the probationary period, the board or its designee may require petitioner to undergo additional psychiatric evaluations by a board-appointed board certified psychiatrist. Prior to the completion of probation, if petitioner is found to be mentally unfit to resume the practice of medicine without restrictions, the board shall retain continuing jurisdiction over petitioner's certificate, and the period of probation shall be extended until the board determines that petitioner is mentally fit to resume the practice of medicine without restrictions.

Petitioner shall pay the cost of all psychotherapy and psychiatric evaluations.

E. Professional Boundaries Program (Condition Subsequent)

Within 60 calendar days from the effective date of this Decision, petitioner shall enroll in a professional boundaries program approved in advance by the board or its designee. At the program's discretion, petitioner shall undergo and complete the program's assessment of clinical competency, mental health and/or neuropsychological performance, and, at minimum, a 24 hour program or interactive education and training in the area of boundaries, which takes into account data obtained from the assessment and from the Decision (Petition for Reinstatement), Decision (Accusation), Accusation, Stipulation for Voluntary Suspension of License, and any other information that the board or its designee deems

relevant. The program shall evaluate petitioner at the end of the training, and the program shall provide any data from the assessment and training as well as the results of the evaluation to the board or its designee.

Failure to complete this entire program not later than six (6) months after petitioner's initial enrollment shall constitute a violation of probation unless the board or its designee agrees in writing to a later time for completion. Based on petitioner's performance in and evaluations from the assessment, education, and training, the program shall advise the board or its designee of its recommendation(s) for additional education, training, psychotherapy and other measures necessary to ensure that petitioner can practice medicine safely. Petitioner shall comply with program recommendations. At the completion of the program, petitioner shall submit to a final evaluation. The program shall provide the results of the evaluation to the board or its designee. The professional boundaries program shall be at petitioner's expense and shall be in addition to the Continuing Medical Education requirements for renewal of his license.

The program has the authority to determine whether or not petitioner successfully completed the program.

A professional boundaries course taken after the acts that gave rise to the charges in the Accusation, but prior to the effective date of this Decision may, in the sole discretion of the board or its designee, be accepted towards the fulfillment of this condition if the course would have been approved by the board or its designee had the course been taken after the effective date of this Decision.

If petitioner fails to complete the program within the designated time period, petitioner shall cease the practice of medicine within three calendar days after being notified by the board or its designee in writing that petitioner failed to complete the program.

F. Professionalism Program (Ethics Course)

Within 60 calendar days of the effective date of this Decision, petitioner shall enroll in a professionalism program, that meets the requirements of Title 16, California Code of Regulations, section 1358.1. Petitioner shall participate in and successfully complete that program. Petitioner shall provide any information and documents that the program may deem pertinent. Petitioner shall successfully complete the classroom component of the program not later than six months after petitioner's initial enrollment, and the longitudinal component of the program not later than the time specified by the program, but no later than one year after attending the classroom component. The professionalism program shall be at petitioner's expense and shall be in addition to the CME requirements for renewal of his Certificate.

A professionalism program taken after the acts that gave rise to the charges in the Accusation but prior to the effective date of the Decision may, in the sole discretion of the board or its designee, be accepted towards the fulfillment of this condition if the program would have been approved by the board or its designee had the program been taken after the effective date of this Decision

Petitioner shall submit a certificate of successful completion to the board or its designee not later than 15 calendar days after successfully completing this Program or not later than 15 calendar days after the effective date of the Decision, whichever is later.

G. Monitoring – Practice/Computer/Behavior

Within 30 calendar days of the effective date of this Decision, petitioner shall submit to the board or its designee for prior approval as a practice monitor, the name and qualifications of one or more licensed physicians and surgeons whose licenses are valid and in good standing, and, preferably, who are American Board of Medical Specialties certified. A monitor shall have no prior or current business or personal relationship with petitioner, or other relationship that could reasonably be expected to compromise the ability of the monitor to render fair and unbiased reports to the board, including but not limited to, any form of bartering, shall be in petitioner's field of practice and must agree to serve as petitioner's monitor. Petitioner shall pay all monitoring costs.

The board or its designee shall provide the approved monitor with copies of the Decision (Petition for Reinstatement), Decision (Accusation), the Accusation, the Stipulation for Voluntary Suspension of License and a proposed monitoring plan. Included in the proposed monitoring plan shall be the plan (in conjunction with petitioner's employer) to monitor petitioner's behavior and computer. Within 15 calendar days of receipt of the foregoing documents, the monitor shall submit a signed statement that the monitor has read the Decision (Petition for Reinstatement), Decision (Accusation), the Accusation and the Stipulation for Voluntary Suspension of License and fully understands the role of a monitor and agrees or disagrees with the proposed monitoring plan. If the monitor disagrees with the proposed monitoring plan, the monitor shall submit a revised monitoring plan with the signed statement for approval by the board or its designee. The revised monitoring plan shall include the plan (in conjunction with petitioner's employer) to monitor petitioner's behavior and computer.

Within 60 calendar days of satisfying the date of this Decision and continuing throughout probation, petitioner's practice (including computer and behavior) shall be monitored by the approved monitor. Petitioner shall make all records available for immediate inspection

and copying on the premises by the monitor at all times during business hours and shall retain the records for the term of probation.

If petitioner fails to obtain approval of a monitor within 60 calendar days of the effective date of this Decision, petitioner shall receive a notification from the board or its designee to cease the practice of medicine within three calendar days after being so notified. Petitioner shall not resume the practice of medicine until a monitor is approved to provide monitoring responsibility.

The monitor shall submit a quarterly written report to the board or its designee which includes an evaluation of petitioner's performance, indicating whether petitioner's practices are within the standards of practice, whether there is any concern about his behavior or findings on his computer, whether petitioner is practicing medicine safely and billing appropriately. It shall be petitioner's sole responsibility to ensure that the monitor submits the quarterly written reports to the board or its designee within 10 calendar days after the end of the preceding quarter.

If the monitor resigns or is no longer available, within five calendar days of such resignation or unavailability, petitioner shall submit to the board or designee, for prior approval, the name and qualifications of a replacement monitor who will be assuming that responsibility within 15 calendar days. If petitioner fails to obtain approval of a replacement monitor within 30 calendar days of the resignation or unavailability of the monitor, petitioner shall receive a notification for the board or its designee to cease the practice of medicine. Within three calendar days after being so notified, petitioner shall cease the practice of medicine until a replacement monitor is approved and assumes monitoring responsibility.

H. Solo Practice Prohibition

Petitioner is prohibited from engaging in the solo practice of medicine. Prohibited solo practice includes, but is not limited to, a practice where: (1) petitioner merely shares office space with another physician but is not affiliated for purposes of providing patient care, or (2) petitioner is the sole physician practitioner at that location.

Petitioner may only practice in an environment in which his employer monitors petitioner's computer activity and his behavior and reports the foregoing in writing, under penalty of perjury, to petitioner's probation monitor on a quarterly basis. Petitioner must obtain written approval of the practice setting from the board or its designee prior to commencing the practice of medicine with the employer.

If petitioner fails to secure employment in an appropriate practice setting within 60 calendar days of satisfying the conditions precedent, petitioner shall receive a notification from the board or its designee to cease the

practice of medicine within three calendar days after being so notified. Petitioner shall not resume the practice of medicine until an appropriate practice setting is established in compliance with this Decision.

During the probationary period, if petitioner's practice setting changes and he is no longer practicing in a setting in compliance with this Decision, petitioner shall notify the board or its designee within five days of the practice setting change. If petitioner does not secure employment in a setting in compliance with this Decision within 30 calendar days of the practice setting change, petitioner shall receive notification from the board or its designee to cease the practice of medicine within three calendar days after being so notified. Petitioner shall not resume practice until an appropriate practice setting is established.

I. Education Course

Within 60 calendar days of the effective date of this Decision, and on an annual basis thereafter, petitioner shall submit to the board or its designee, for its prior approval, educational program(s) or course(s) which shall not be less than 40 hours per year, for each year of probation. The educational program(s) or course(s) shall be in the area of addiction and shall be Category 1 certified. The educational program(s) or course(s) shall be at petitioner's expense and shall be in addition to the CME requirements for renewal of his certificate. Following the completion of each course, the board or its designee may administer an examination to test petitioner's knowledge of the course. Within the time period designated by the board or its designee, petitioner shall provide proof of attendance for 65 hours of CME of which 40 hours were in satisfaction of this condition.

J. Notification

Within seven days of the effective date of this Decision, petitioner shall provide a true copy of the Decision (Petition for Reinstatement), Decision (Accusation), the Accusation and the Stipulation for Voluntary Surrender of License to the Chief of Staff or the Chief Executive Officer at every hospital where privileges or membership are extended to petitioner, at any other facility where petitioner engages in the practice of medicine, including all physician and locum tenens registries or other similar agencies, and to the Chief Executive Officer at every insurance carrier which extends malpractice insurance coverage to petitioner. Petitioner shall submit proof of compliance to the board or its designee within 15 calendar days.

This condition shall apply to any change(s) in hospitals, other facilities or insurance carrier.

K. Supervision of Physician Assistants and Advance Practice Nurses

During probation, petitioner is prohibited from supervising physician assistants and advance practice nurses.

L. Obey All Laws

Petitioner shall obey all federal, state and local laws, all rules governing the practice of medicine in California and remain in full compliance with any court ordered criminal probation, payments, and other orders.

M. Quarterly Declarations

Petitioner shall submit quarterly declarations under penalty of perjury on forms provided by the board, stating whether there has been compliance with all the conditions of probation.

Petitioner shall submit quarterly declarations not later than 10 calendar days after the end of the preceding quarter.

N. General Probation Requirements

Compliance with Probation Unit

Petitioner shall comply with the board's probation unit.

Address Changes

At all times, petitioner shall keep the board informed of petitioner's business and residence addresses, email address (if available), and telephone number. Change of such addresses shall be immediately communicated in writing to the board or its designee. Under no circumstances shall a post office box serve as an address of record, except as allowed by Business and Professions Code section 2021, subdivision (b).

Place of Practice

Petitioner shall not engage in the practice of medicine in petitioner's or patient's place of residence, unless the patient resides in a skilled nursing facility or other similar licensed facility.

License Renewal

Petitioner shall maintain a current and renewed California physician's and surgeon's certificate.

Travel or Residence outside California

Petitioner shall inform the board or its designee, in writing, of travel to any areas outside the jurisdiction of California, which lasts, or is contemplated to last, more than 30 calendar days.

In the event petitioner leaves the State of California to reside or to practice, petitioner shall notify the board or its designee, in writing, 30 calendar days prior to the dates of departure and return.

O. Interview with the Board or its Designee

Petitioner shall be available in person upon request for interviews either at petitioner's place of business or at the probation unit office, with or without prior notice throughout the term of probation.

P. Non-practice While on Probation

Petitioner shall notify the board or its designee in writing within 15 calendar days of any period of non-practice lasting more than 30 calendar days and within 15 calendar days of petitioner's return to practice. Non-practice is defined as any period of time petitioner is not practicing medicine as defined in Business and Professions Code sections 2051 and 2052 for at least 40 hours in a calendar month in direct patient care, clinical activity, teaching, or other activity as approved by the board or its designee. If petitioner resides in California and is considered to be in non-practice, petitioner shall comply with all terms and conditions of probation. All time spent in an intensive training program, which has been approved by the board or its designee, shall not be considered non-practice and does not relieve petitioner from complying with the terms and conditions of probation. Practicing medicine in another state of the United States or federal jurisdiction while on probation with the medical licensing authority of that state or jurisdiction shall not be considered non-practice. A board-ordered suspension of practice shall not be considered as a period of non-practice.

While on probation, if petitioner's period of non-practice exceeds 18 calendar months, petitioner shall complete the Federation of State Medical Boards' Special Purpose Examination, or, at the board's discretion, a clinical competence assessment program that meets the criteria of Condition 18 of the current version of the board's "Manual Model Disciplinary Orders and Disciplinary Guidelines" (Condition A herein) prior to resuming the practice of medicine.

Petitioner's period of non-practice while on probation shall not exceed two years.

Periods of non-practice will not apply to the reduction of the probationary term.

While residing outside of California, periods of non-practice shall relieve petitioner of the responsibility to comply with the probationary terms and conditions with the exception of this condition and the following terms and conditions of probation: Obey All Laws; General Probation

Requirements; and Quarterly Declarations.

Q. Completion of Probation

Petitioner shall comply with all financial obligations (e.g., probation costs) not later than 120 calendar days prior to the completion of probation. Upon successful completion of probation, petitioner's certificate shall be fully restored.

R. Violation of Probation

Failure to fully comply with any term or condition of probation is a violation of probation. If petitioner violates probation in any respect, after giving notice and the opportunity to be heard, the board may revoke probation and carry out the disciplinary order that was stayed. If an Accusation, and/or Petition to Revoke Probation, or an Interim Suspension Order is filed against petitioner during probation, the board shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

S. License Surrender

Following the effective date of this Decision, if petitioner ceases practice due to retirement or health reasons or is otherwise unable to satisfy the terms and conditions of probation, petitioner may request to surrender his license. The board reserves the right to evaluate petitioner's request and to exercise its discretion in determining whether or not to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances. Upon formal acceptance of the surrender, within 15 calendar days, petitioner shall deliver his wallet and wall certificate to the board or its designee, and petitioner shall no longer practice medicine. Petitioner will no longer be subject to the terms and conditions of probation. If petitioner re- applies for a medical license, the application shall be treated as a petition for reinstatement of a revoked certificate.

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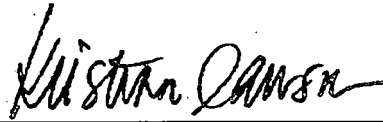
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T. Probation Monitoring Costs

Petitioner shall pay the costs associated with probation monitoring each year of probation, as designated by the board, which may be adjusted on an annual basis. Such costs shall be payable to the Medical Board of California and shall be delivered to the board or its designee no later than January 31 of each calendar year.

This Decision shall become effective at 5:00 pm on September 14, 2018.

IT IS SO ORDERED August 15, 2018.



KRISTINA D. LAWSON, J.D., CHAIR
PANEL B

**BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Petition for Reinstatement)
of:)

MARK ZWEIFACH)

Case No.: 800-2016-027831

OAH No.: 2017100593

Petitioner)
_____)

**AMENDED ORDER OF NON-ADOPTION
OF PROPOSED DECISION**

The Proposed Decision of the Administrative Law Judge in the above-entitled matter has been **non-adopted**. A panel of the Medical Board of California (Board) will decide the case upon the record, including the transcript and exhibits of the hearing, and upon such written argument as the parties may wish to submit directed at whether the petitioner is sufficiently rehabilitated to warrant the reinstatement of his physician's and surgeon's certificate and if so, under what conditions. The parties will be notified of the date for submission of such argument when the transcript of the above-mentioned hearing becomes available.

To order a copy of the transcript, please contact Jilio-Ryan Court Reporters, 14661 Franklin Avenue, Suite 150, Tustin, CA 92780. The telephone number is (800) 454-1230.

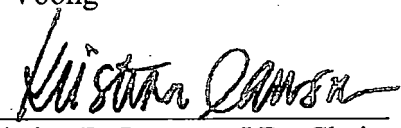
To order a copy of the exhibits, please submit a written request to this Board.

In addition, oral argument will only be scheduled if a party files a request for oral argument with the Board within 20 days from the date of this notice. If a timely request is filed, the Board will serve all parties with written notice of the time, date and place for oral argument. Oral argument shall be directed only to the question of whether the proposed penalty should be modified. Please do not attach to your written argument any documents that are not part of the record as they cannot be considered by the Panel. The Board directs the parties' attention to Title 16 of the California Code of Regulations, sections 1364.30 and 1364.32 for additional requirements regarding the submission of oral and written argument.

Please remember to serve the opposing party with a copy of your written argument and any other papers you might file with the Board. The mailing address of the Board is as follows:

MEDICAL BOARD OF CALIFORNIA
2005 Evergreen Street, Suite 1200
Sacramento, CA 95815-3831
(916) 263-2349
Attention: Kristy Voong

Date: May 2, 2018



Kristina D. Lawson, J.D., Chair
Panel B

**BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Petition for Reinstatement)
of:)

MARK ZWEIFACH)

Case No.: 800-2016-027831

OAH No.: 2017100593

Petitioner)
_____)

**ORDER OF NON-ADOPTION
OF PROPOSED DECISION**

The Proposed Decision of the Administrative Law Judge in the above-entitled matter has been **non-adopted**. A panel of the Medical Board of California (Board) will decide the case upon the record, including the transcript and exhibits of the hearing, and upon such written argument as the parties may wish to submit directed at whether the level of discipline ordered is sufficient to protect the public. The parties will be notified of the date for submission of such argument when the transcript of the above-mentioned hearing becomes available.

To order a copy of the transcript, please contact Jilio-Ryan Court Reporters, 14661 Franklin Avenue, Suite 150, Tustin, CA 92780. The telephone number is (800) 454-1230.


To order a copy of the exhibits, please submit a written request to this Board.

In addition, oral argument will only be scheduled if a party files a request for oral argument with the Board within 20 days from the date of this notice. If a timely request is filed, the Board will serve all parties with written notice of the time, date and place for oral argument. Oral argument shall be directed only to the question of whether the proposed penalty should be modified. Please do not attach to your written argument any documents that are not part of the record as they cannot be considered by the Panel. The Board directs the parties attention to Title 16 of the California Code of Regulations, sections 1364.30 and 1364.32 for additional requirements regarding the submission of oral and written argument.

Please remember to serve the opposing party with a copy of your written argument and any other papers you might file with the Board. The mailing address of the Board is as follows:

MEDICAL BOARD OF CALIFORNIA
2005 Evergreen Street, Suite 1200
Sacramento, CA 95815-3831
(916) 263-2349
Attention: Kristy Voong

Date: April 30, 2018



Kristina D. Lawson, J.D., Chair
Panel B

BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Petition for
Reinstatement Against:

MARK BARRY ZWEIFACH,

Petitioner.

Case No. 800-2016-027831

OAH No. 2017100593

PROPOSED DECISION

Administrative Law Judge Vallera J. Johnson, Office of Administrative Hearings, State of California, heard this matter in San Diego, California, on January 23, 2018.

Joseph F. McKenna III, Deputy Attorney General, represented the people of the State of California.

David M. Balfour, Attorney at Law, of the law firm of Nossaman LLP, represented Mark Barry Zweifach.

The matter was submitted on January 23, 2018.

FACTUAL FINDINGS

License History

1. On August 9, 1982, the Medical Board of California, Department of Consumer Affairs, State of California (board), issued Physician's and Surgeon's Certificate No. G 48626 (certificate) to Mark Barry Zweifach (petitioner).

Prior Disciplinary History

2. On September 16, 2008, petitioner signed a Stipulation for Voluntary Suspension of License in case number 10-07-188130. This Stipulation for Voluntary Suspension cited a pending investigation against him by the San Diego Police Department for "conduct which if proven would constitute unprofessional conduct and grounds for discipline of his Physician's and Surgeon's Certificate."

3. On September 24, 2010, the board's executive officer filed Accusation, Case No. 10-07-188130, alleging that petitioner engaged in unprofessional conduct in violation of Business and Professions Code section 2234.

On October 27, 2011, petitioner signed a Stipulated Surrender of License and Disciplinary Order. On December 6, 2011, the board adopted the Stipulated Surrender of License and Order. On December 13, 2011, the board's decision became effective.

Petition for Penalty Relief

4. On October 20, 2016, nine years after the misconduct that resulted in discipline of his license, petitioner signed a Petition for Penalty Relief, seeking reinstatement of his certificate. Attached to his Petition were the following documents.

- His narrative statement and personal statement addendum,
- Eleven letters of support,¹
- Evidence of completion of AMA PRA Category 1 Credits, and
- Certificate of Completion of the Professional Boundaries Program, issued on October 26, 2008.

Flor Flatley, a special investigator with the Department of Investigation, Health Quality Investigation Unit, conducted an investigation of the petition. Her investigation included an interview of petitioner as well as an interview of two of the three physicians who submitted letters in support of the petition.

5. Petitioner described his education, training and experience prior to discipline of his license.

In 1971, he obtained a Bachelor of Arts degree in psychology and theater arts from Antioch College. In 1974, petitioner obtained a Master of Science degree in clinical psychology from California State University – San Francisco. In 1981, he obtained his medical degree from University of California - Irvine.

Between 1981 and 1982, petitioner completed a residency in internal medicine; between 1982 and 1984, he completed a residency in psychiatry. Between 1983 and 1984, he completed a fellowship in geriatric psychiatry. In 1988, he was board certified in psychiatry; in 1992, he added the qualification in geriatrics.

¹ Two of the letters were signed by the same person.

Between 1985 and 1986, while in Vallejo, petitioner was a staff psychiatrist at Kaiser Permanente Medical Center; in addition, he was the medical director of Hillhaven Alameda Alzheimer's Unit. Between 1986 and 1989, petitioner was the supervising psychiatrist, Senior Evaluation and Treatment Unit, San Diego County Mental Health Services. Between 1987 and 1990, petitioner had a private practice. Between 1990 and 2007, petitioner was a staff psychiatrist and partner at Southern California Permanente Medical Group in San Diego. Between 1986 and 2007, petitioner was an assistant clinical professor in the Department of Psychiatry at the University of California – San Diego School of Medicine. In addition to the foregoing, he had extensive experience in psychiatry.

Prior to ceasing practice in 2007, petitioner had a practice in psychiatry with a subspecialty in geriatrics. About half his patients were geriatric and half were not. At no time has petitioner provided medical care to children.

6. Petitioner has a sex addiction and an addiction to internet pornography. He testified that he realized that he had the addiction during the 1990s with the advent of the computer. In or about 2003, he contacted Michael Maher, a therapist, for treatment. Between 2003 and 2007, he received treatment, initially weekly, then bi-weekly and thereafter monthly until he ceased therapy when he believed he was in recovery. Also, at Mr. Maher's suggestion, petitioner began attending Sexaholics Anonymous (SA)² and continued to do so until 2007. In 2003 while obtaining treatment from Mr. Maher, petitioner attended SA two to three times a week; at that time, he did not work the program thoroughly.

In 2007, petitioner relapsed and accessed websites from his home computer. At the time, he had a filter on his computer; but, he disabled the filter and subscribed to a pornographic site. Then, while at work, on his Kaiser issued computer, petitioner intended to unsubscribe from the pornographic website; instead, on occasions in July, August and September 2007, while at work, on his Kaiser issued computer, petitioner viewed inappropriate images, including child pornography. According to petitioner, a contributing factor to his acting-out behavior was the instability of his marriage. He was separated from his wife who was having an extramarital affair, and he was "extremely distressed and upset." This kind of ongoing stress was fertile ground for addictive behavior to come to the surface, though no excuse or justification for his misconduct. That marriage ended in divorce; for the past five years, he has been in a "healthy committed relationship" with his fiancée.

After being notified that staff (of Kaiser Foundation Hospital – San Diego) had learned that material (considered to be child pornography) was found on his office computer in October 2007, petitioner resigned from his position with Southern California Permanente Medical Group, resigned clinical privileges at KFH - San Diego and resigned his

² Sexaholics Anonymous is a 12-step program. Petitioner explained that the only requirement is the participant's desire to cease compulsive sexual behavior.

membership and clinical privileges from Sharp Mesa Vista Hospital.³ He has not practiced medicine since October 2007.

7. Petitioner described his evidence of rehabilitation.

After engaging in the conduct that resulted in termination of his employment, voluntary suspension of and ultimately revocation of his license, petitioner undertook rehabilitation efforts for his sex and internet pornography addictions.

- Since commencing treatment with Mr. Maher, petitioner has maintained a continuous relationship with him. Mr. Maher moved to Idaho in 2004. Between 2004 and the 2007 incident, petitioner and Mr. Maher communicated at least once a month and met in person when Mr. Maher returned to California, which was typically once or twice a year. Mr. Maher has acted as a case manager and advisor regarding petitioner's treatment and recovery. Petitioner described him as a "super sponsor."

After the October 2007 incident, petitioner immediately called Mr. Maher and disclosed everything about the incident. At all times, petitioner has followed Mr. Maher's recommendations.

- Between November 27, 2007, and January 8, 2008, in accordance with Mr. Maher's recommendation, petitioner voluntarily underwent in-patient rehabilitation treatment for sex addiction at Keystone Center, a nationally known treatment center for sex addicts, in Pennsylvania. It was an intensive program. For two weeks, he could not leave the site; no cellular telephones were allowed; he had individual therapy several times a week and attended group meetings as well as community meetings.
- Following his completion of the residential treatment, petitioner followed the recommendations of Keystone staff. Upon his return to San Diego, he began treatment with Bill Martin, a licensed marriage and family therapist and a certified sex addiction therapist. For over 20 years, Mr. Martin's practice has focused on helping people with addictions, principally sex addictions. Petitioner saw him regularly between January 15, 2008, and May 1, 2012, completing 58 sessions during that time. Mr. Martin was aware that petitioner attended the 12-step programs, either SA or Sex Addicts Anonymous, and petitioner's role in these programs. Petitioner terminated treatment with Mr. Martin in 2012 with his goals met for therapy at that time; he continued 12-step attendance, which Mr. Martin and petitioner believe is a life-long commitment. In Mr. Martin's opinion,

³ No evidence was offered to establish that his resignation from Sharp Mesa Vista Hospital was due to any adverse issues which occurred at Sharp Mesa Vista Hospital.

petitioner is at “reduced risk with a low possibility of repeating offensive behavior.” In Mr. Martin’s opinion, petitioner is “not a danger to society” if his license is reinstated.

- In October 2007 petitioner returned to therapy with Judith Matson, Ph.D., whom he had seen for relationship issues in 1998. At that time, petitioner continued regular therapy with Dr. Matson (first weekly and then bi-weekly) for four years. At that time, his addiction to pornography was a minor focus, and he had strategies for maintaining sobriety that seemed adequate to Dr. Matson.

When he returned for therapy with Dr. Matson in October 2007 and during the next two years, his addiction was their primary focus. At that time, petitioner attended the six-week treatment program at Keystone. In Dr. Matson’s opinion, petitioner “developed a strong program for maintaining sobriety and committed to Sexaholics Anonymous, attending meetings, working with a sponsor, being a sponsor, volunteering for service positions and attending numerous conferences.” Dr. Matson has continued to see petitioner intermittently, supporting his work with Mr. Martin (an addiction specialist) and his participation in SA and SAA. She is impressed with petitioner’s “persistent dedication to achieving a balance in his life that includes emotional health and sobriety, and he will do what he needs to do in order to maintain it.” In Dr. Matson’s opinion, petitioner is in solid recovery from his addiction and offers no threat to society; he should be allowed to resume his medical practice.

- He received treatment from John Milner, M.D., one of the founding physicians of addiction treatment for alcoholism in San Diego. In his letter, Dr. Milner noted that at the time of the license discipline, petitioner fell into deep despair but obtained the best treatment available in the country and followed recommendations from Keystone staff and attended appropriate anonymous self-help fellowships. “The shame and guilt produced by the incident and loss of his license was so profound in this ‘perfectionist’ that he had not the ego strength to consider re-apply [*sic*]. However, through his dedicated work with SLA, he has developed a re-birth of hope and continues to be abstinent requiring rigid boundaries in regards[*sic*] internet world.” According to Dr. Milner, the development of these boundaries has allowed petitioner to be open to filing the petition for reinstatement and “complete the final emotional and financial entanglements with his now ex-wife.” In Dr. Milner’s opinion, petitioner has followed his treatment plan for several years, has developed and adhered to his boundaries, “the call of the internet has radically reduced,” and he possesses a solid relapse prevention plan; he is in stable remission from his addictive disorder. Dr. Milner believes that petitioner is of “no

risk to the public.” Therefore, he supports reinstatement of petitioner’s certificate to practice medicine.

- When he returned from Keystone, petitioner continued attending SA meetings. During the first 90 days, he attended 90 meetings. He has worked on the steps, held leadership positions, had a sponsor and sponsored others. Approximately three years ago, he transferred to Sex Addicts Anonymous (SAA) because he began a relationship with his fiancée; SA does not permit sexual relationships outside of marital relationships, while SAA permits sex within a committed relationship. Petitioner serves as secretary of the weekly SAA meeting, for which he organizes speakers, scheduling, greetings and other logistics. He intends to remain involved in SAA.
- He acknowledged that he has relapsed on at least two if not three occasions; in each case, he notified his sponsor and rededicated himself to his recovery program.
- He expressed remorse for his misconduct. He recognized and acknowledged that pornography is not a victimless act; it perpetuates an exploitative industry and harms those involved.
- During his board interview, petitioner explained what he would do differently than the conduct that resulted in dismissal from his employment and discipline of his license. He would have a filter on his home computer; instead of acting out, he would call his sponsor or someone else in the 12-step program; perhaps, be more aware of the stress he is under; perhaps intervene earlier, and do a better job of anticipating what can happen.
- He described his available supports.
- Between October 26 and 28, 2008, petitioner completed a Professional Boundaries Program.
- Between 2007 and 2011, petitioner volunteered on a weekly basis at San Diego Hospice, Alzheimer’s Association, Second Chance and McAlister Institute. An inaccurate story was published on the internet that stated that petitioner was required to register as a sex offender; as a result of this story, petitioner was required to cease this volunteer work.
- Between 2011 and 2015, petitioner was the care provider for his ailing mother until she passed away.

- Petitioner has participated in theater, both acting and directing. Some opportunities have been impacted by publicity regarding the October 2007 incident.

8. In addition to his letter in support of the petition, Mr. Maher testified as a witness in this proceeding.

Prior to his retirement, for over 20 years, Mr. Maher was an addiction clinician as well as a minister. He holds a master's degree in clinical psychology with a subspecialty in addiction.

He briefly described his experience. He moved to San Diego in 1980. Between 1983 and 1995, he worked in chemical abuse treatment programs. In 1995, he established a private practice, providing treatment for addiction. Among other things, his experience included serving as a board probation monitor, following physicians in the board's diversion program (when it existed) and providing treatment for other addicted professionals, such as nurses and attorneys.

Overall, his testimony was consistent with petitioner's testimony regarding timelines and their relationship. However, he provided insight into petitioner's progress, growth and relapses.

Mr. Maher recalled that he began treatment with petitioner in or about 2000. However, he admitted that he did not have his notes with him, and it may have been another date. Mr. Maher confirmed that petitioner notified him immediately after the (October 2007) incident that led to his resignation and ultimately his license discipline.

After the (October 2007) incident, in Mr. Maher's opinion, it was necessary for petitioner to get away from the temptation and Mr. Maher suggested Keystone; it was a good program, and he explained the reasons that it was. During the time that petitioner was in Keystone, Mr. Maher was in touch with the staff of Keystone and discussed petitioner's progress on two or three occasions. He spoke to petitioner once while he was at Keystone. According to the staff, petitioner was doing fine. Mr. Maher was fully aware of the treatment petitioner received after returning to San Diego, including his involvement in self-help groups. Mr. Maher explained that self-help groups are important because they provide accountability; the members monitor each other.

Mr. Maher described his impression of petitioner's emotions after his resignation from Kaiser. At that time, he recalled that petitioner "struggled with this"; it was serious because it occurred at work, and the fact that it involved children amplified the situation.⁴

⁴ In Mr. Maher's opinion, regarding the addiction, the fact that it involved child pornography was not relevant; the treatment was the same for sex addiction. Mr. Maher described a substance abuse situation to clarify; if the addict used heroin or cocaine, it was

Petitioner had intense feelings of shame, guilt and embarrassment, initially more from ego, i.e., how it looked, what would people think. Since 2008, Mr. Maher has observed the most growth in petitioner's level of acceptance; petitioner has acknowledged that the difficulties he experienced had to do with him and no one else. Further, he takes responsibility for his recovery.

In Mr. Maher's opinion, petitioner is in recovery. He explained the distinction between abstinence and being in recovery. Though they both look the same, those who simply abstain are less authentic; generally, these individuals are not comfortable; so, they fight "at every turn"; they are not comfortable being around; those in recovery are more "authentic"; they are open, "above board" and willing to respond to questions; they work toward maintaining recovery, including attending self-help groups.

In Mr. Maher's opinion, petitioner is not a danger to himself or others and is safe to practice medicine; seven or eight years ago, Mr. Maher did not have this opinion; he did not think it was practical for petitioner to practice; however, he has watched petitioner "make forward movement"; now, he believes petitioner is ready. Mr. Maher supports reinstatement of petitioner's license with restrictions/conditions, including not treating children, monitoring his behavior and his computer and requiring that he check in with his therapist.

Mr. Maher was aware that petitioner had lapsed on two separate occasions but is not aware of any lapse that occurred recently (within the last 18 months). Sometimes when lapses occur, the addict denies or attempts to hide it; if that is the case, the lapse is worse. That is not what occurred in petitioner's case. After each lapse, petitioner told Mr. Maher immediately, acknowledged the lapse and got back into the recovery program. Mr. Maher views lapse as the nature of the illness of addiction. As a result, Mr. Maher's opinion did not change; petitioner is safe to practice.

9. Petitioner provided letters of support from William Power, M.D., and Harvey Peskin, Ph.D. In addition, Dr. Power testified as a witness in this proceeding.

- Dr. Power and petitioner attended medical school together, have known each other at least since 1977 and have maintained their relationship since that time. Both men are psychiatrists. Dr. Power considers petitioner to be a highly respected colleague as well as a close friend. Dr. Power has been previously disciplined by the board for boundary violations. Petitioner and Dr. Power communicate frequently and meet at least once or twice a year. During more difficult times, they communicate more frequently. He is aware of petitioner's addictions, employment and license discipline and efforts at recovery. In his opinion, petitioner's "past commitments as well as current and future efforts will ensure the necessary safeguards and

not relevant; the treatment was the same. However, viewing child pornography has other possible ramifications, such as legal aspects.

accountability that are a part of his ongoing recovery process.” Dr. Power supports reinstatement of petitioner’s certificate to practice medicine.

- Harvey Peskin, Ph.D., submitted two letters in support of reinstatement of petitioner’s license, one written in 2011 and the other in 2016. Petitioner could not explain the reason that there were two letters from Dr. Peskin.

Dr. Peskin was petitioner’s professor during his master’s degree program in psychology at San Francisco State University. They have maintained a relationship since that time. Dr. Peskin was aware of petitioner’s addiction and his efforts to achieve and maintain recovery. He supports reinstatement of petitioner’s certificate to practice medicine.

10. Petitioner provided a letter of support from a friend and co-sponsor in SAA. He has known petitioner for three years and supports petitioner’s testimony about his involvement in SAA, his commitment to sobriety and therefore reinstatement of his license.

11. Petitioner provided three letters from physicians licensed by the board, signed under penalty of perjury, who support his petition for reinstatement.

Lisa E. Heikoff, M.D., and Radharani Gattu, M.D., are former colleagues of petitioner while he was at Kaiser and have known petitioner since 1990. After each submitted her letter, the board’s investigator contacted Doctors Heikoff and Gattu and provided each with a copy of the disciplinary documents and spoke to them. After reviewing the disciplinary documents, neither changed the opinion stated in her letter.

- In her letter, Dr. Heikoff described her credentials, her professional relationship with petitioner, and his role and reputation at Kaiser, specifically in geriatric psychiatry. She has not observed the behavior that resulted in discipline of his license. She believes that he has completed the required treatment and is safe to practice medicine.
- In her letter, Dr. Gattu stated that she has the utmost respect for petitioner “as a friend and esteemed colleague. He is highly respected by his colleagues and I know his patients loved him.” Further, she stated, if he returns to practice, he would be an asset to the community, particularly the underserved population of geriatrics.
- The third letter was from Dr. Milner, a psychiatrist who provided treatment for petitioner as discussed above. Prior to providing treatment to petitioner, he was aware of petitioner as a psychiatrist/colleague in the community and “the high level of respect and confidence in his ability” as a practicing psychiatrist in the Department of Psychiatry at Kaiser. He supports reinstatement of petitioner’s certificate (Finding 7).

12. Petitioner described his efforts to remain current regarding his medical knowledge. Since 2007, annually, among other things, he has completed 30 continuing medical education courses, has attended a UCSD Alzheimer's conference and read journals.

13. If his license is reinstated, petitioner intends to resume practice in the area of geriatric psychiatry, a field of special interest.

LEGAL CONCLUSIONS

Relevant Statute and Regulation

1. Business and Professions Code section 2307 states, in part:

(a) A person whose certificate has been surrendered while under investigation or while charges are pending or whose certificate has been revoked or suspended or placed on probation, may petition the board for reinstatement or modification of penalty, including modification or termination of probation.

(b) The person may file the petition after a period of not less than the following minimum periods have elapsed from the effective date of the surrender of the certificate or the decision ordering that disciplinary action:

(1) At least three years for reinstatement of a license surrendered or revoked for unprofessional conduct, except that the board may, for good cause shown, specify in a revocation order that a petition for reinstatement may be filed after two years.

[¶] . . . [¶]

(c) The petition shall state any facts as may be required by the board. The petition shall be accompanied by at least two verified recommendations from physicians and surgeons licensed in any state who have personal knowledge of the activities of the petitioner since the disciplinary penalty was imposed.

(d) . . . The board may assign the petition to an administrative law judge designated in Section 11371 of the Government Code. After a hearing on the petition, the administrative law judge shall provide a proposed decision to the board

(e) . . . [T]he administrative law judge hearing the petition may consider all activities of the petitioner since the disciplinary action was taken, the offense for which the petitioner was disciplined, the petitioner's activities during the time the certificate was in good standing, and the petitioner's rehabilitative efforts, general reputation for truth, and professional ability. . . .

[¶] . . . [¶]

2. California Code of Regulations, title 16, section 1360.2, states:

When considering a petition for reinstatement of a license, certificate or permit holder pursuant to the provisions of Section 11522 of the Government Code, the division or panel shall evaluate evidence of rehabilitation submitted by the petitioner considering the following criteria:

(a) The nature and severity of the act(s) or crime(s) under consideration as grounds for denial.

(b) Evidence of any act(s) or crime(s) committed subsequent to the act(s) or crime(s) under consideration as grounds for denial which also could be considered as grounds for denial under Section 480.

(c) The time that has elapsed since commission of the act(s) or crime(s) referred to in subsections (a) or (b).

[¶] . . . [¶]

(e) Evidence, if any, of rehabilitation submitted by the applicant.

Burden and Standard of Proof

3. In a proceeding to restore a disciplined professional license, the burden rests on a petitioner to prove that he has rehabilitated himself and that he is entitled to have the license restored. (*Flanzer v. Board of Dental Examiners* (1990) 220 Cal.App.3d 1392, 1398.)

4. A person seeking reinstatement must present strong proof of rehabilitation and a sufficient showing of rehabilitation to overcome the board's former adverse determination. The standard of proof is clear and convincing evidence. (*Hippard v. State Bar of California* (1989) 49 Cal.3d 1084, 1092-1093.)

Evaluation

5. Prior to discipline of his license by the board, petitioner had been licensed for 16 years. He is a sex addict and is addicted to pornography. His license was disciplined because he viewed pornography at work. He has not practiced medicine since October 2007.

The first issue is whether petitioner has complied with the requirements of Code section 2307. Assuming he has, the next issue is whether he is rehabilitated, considering the criteria set forth in the foregoing statute as well as California Code of Regulations, section 1360.2.

6. Petitioner complied with the requirements set forth in Code section 2307.
- It has been more than 10 years since petitioner engaged in the misconduct that resulted in revocation of his license.
 - Petitioner provided letters from three physicians licensed to practice in the State of California who had knowledge of his reputation as a physician; over the years, each physician has had contact with petitioner, had knowledge of his misconduct and efforts at rehabilitation. These physicians support reinstatement of his license. The board's investigator verified the letters from Doctors Heikoff and Gattu.

7. Petitioner provided significant evidence of rehabilitation. In addition to his own statements and testimony, he provided letters from therapists, from personal friends as well as an individual who participates in SAA with him. Along with the foregoing, he provided the testimony of Mr. Maher and Dr. Powell. Among other things, these individuals were knowledgeable of his addiction and progress in recovery. Dr. Maher's testimony and opinion were trustworthy and reliable because they were based on his extensive education, experience and knowledge of petitioner and involvement in his treatment over the past 13 years or more. He was candid and honest. Based on the foregoing, his opinion was persuasive. Considering the evidence, it was established that it would not be contrary to the public interest to reinstate petitioner's certificate on terms and conditions.

ORDER

I. The Petition to Reinstate Physician's and Surgeon's Certificate No. G 48626 of Mark Barry Zweifach is granted.

II. Physician's and Surgeon's Certificate No. G 48626 issued to Mark Barry Zweifach is reinstated, revoked and placed on probation for five years on the following terms and conditions.

A. Clinical Competence Assessment Program (Condition Precedent)

Within 60 calendar days of the effective date of this Decision, petitioner shall enroll in a clinical competence assessment program approved in advance by the board or its designee. Petitioner shall successfully complete the program not later than six months after his initial enrollment, unless the board or its designee agrees in writing to an extension of that time.

The program shall consist of a comprehensive assessment of petitioner's physical and mental health and the six general domains of clinical competence as defined by the Accreditation Council on Graduate Medical Education and American Board of Medical Specialties pertaining to petitioner's current or intended area of practice. The program shall take into account data obtained from the pre-assessment, self-report forms and interviews, and the Decision (Petition for Reinstatement), Decision (Accusation), Accusation, Stipulation for Voluntary Suspension of License, and any other information that the board or its designee deems relevant. The program shall require petitioner's on-site participation, for a minimum of three and no more than five days, as determined by the program for the assessment and clinical education evaluation. Petitioner shall pay all expenses associated with the clinical competence assessment program.

At the conclusion of the evaluation, the program will submit a report to the board or its designee which unequivocally states whether petitioner has demonstrated the ability to practice safely and independently. Based on petitioner's performance on the clinical competence assessment, the program will advise the board or its designee of its recommendation(s) for the scope and length of any additional educational or clinical training, evaluation or treatment for any medical condition or psychological condition, or anything else affecting petitioner's practice of medicine. Petitioner shall comply with the program's recommendation.

Petitioner shall not practice medicine until he has successfully completed the program, and the board or its designee has so notified him in writing.

B. Psychiatric Evaluation (Condition Precedent)

Within 30 calendar days of the effective date of this Decision, petitioner shall submit to the board or its designee for prior approval the name and qualifications of a California-licensed board certified psychiatrist or a licensed psychologist who has a doctoral degree in

psychology and at least five years of postgraduate experience in the diagnosis and treatment of sex addiction. Upon approval, petitioner shall undergo and continue psychotherapy treatment, including any modifications to the frequency of psychotherapy, until the board or its designee deems that no further psychotherapy is necessary.

The psychotherapist shall consider any information provided by the board or its designee and any other information the psychotherapist deems relevant and shall furnish a written evaluation report to the board or its designee. Petitioner shall cooperate in providing the psychotherapist any information and documents that the psychotherapist may deem pertinent.

Petitioner shall have the treating psychotherapist submit quarterly status reports to the board or its designee. The board or its designee may require petitioner to undergo psychiatric evaluations by a board-appointed board certified psychiatrist. Prior to the completion of probation, if petitioner is found to be mentally unfit to resume the practice of medicine without restrictions, the board shall retain continuing jurisdiction over petitioner's license and the period of probation shall be extended until the board determines that petitioner is mentally fit to resume the practice of medicine without restriction.

Petitioner shall pay the cost of the psychiatric evaluations and the psychotherapy.

Petitioner shall not engage in the practice of medicine until he is notified in writing by the board or its designee that he is psychiatrically fit to practice safely.

C. Prohibited Practice

During the probationary period, petitioner is prohibited from treating minors (children under the age of 18 years). After the effective date of this Decision, all patients being treated by petitioner shall be notified that petitioner is prohibited from treating minors. All new patients must be provided this notification at the time of the initial appointments.

Petitioner shall maintain a log of all patients to whom the required oral notification was made. The log shall contain the: (1) patient's name, address and telephone number; (2) patient's medical record number, if available; (3) full name of the person making the notification; (4) date the notification was made; and (5) description of the notification given. Petitioner shall keep this log in a separate file or ledger, in

chronological order; shall make the log available for immediate inspection and copying on the premises, at all times, during business hours by the board or its designee; and shall retain the log for the probationary term.

D. Psychotherapy

Within 60 calendar days of the effective date of this Decision, petitioner shall submit to the board or its designee for prior approval the name and qualifications of a California-licensed board certified psychiatrist or a licensed psychologist who has a doctoral degree in psychology and at least five years of postgraduate experience in the diagnosis and treatment of sex addiction. Upon approval, petitioner shall undergo and continue psychotherapy treatment, including any modifications to the frequency of psychotherapy, until the board or its designee deems that no further psychotherapy is necessary.

The psychotherapist shall consider any information provided by the board or its designee and any other information the psychotherapist deems relevant and shall furnish a written evaluation report to the board or its designee. Petitioner shall cooperate in providing the psychotherapist any information and documents that the psychotherapist may deem pertinent.

Petitioner shall have the treating psychotherapist submit quarterly status reports to the board or its designee. During the probationary period, the board or its designee may require petitioner to undergo additional psychiatric evaluations by a board-appointed board certified psychiatrist. Prior to the completion of probation, if petitioner is found to be mentally unfit to resume the practice of medicine without restrictions, the board shall retain continuing jurisdiction over petitioner's certificate, and the period of probation shall be extended until the board determines that petitioner is mentally fit to resume the practice of medicine without restrictions.

Petitioner shall pay the cost of all psychotherapy and psychiatric evaluations.

E. Professional Boundaries Program (Condition Subsequent)

Within 60 calendar days from the effective date of this Decision, petitioner shall enroll in a professional boundaries program approved in advance by the board or its designee. At the program's discretion, petitioner shall undergo and complete the program's assessment of clinical competency, mental health and/or neuropsychological

performance, and, at minimum, a 24 hour program or interactive education and training in the area of boundaries, which takes into account data obtained from the assessment and from the Decision (Petition for Reinstatement), Decision (Accusation), Accusation, Stipulation for Voluntary Suspension of License, and any other information that the board or its designee deems relevant. The program shall evaluate petitioner at the end of the training, and the program shall provide any data from the assessment and training as well as the results of the evaluation to the board or its designee.

Failure to complete this entire program not later than six (6) months after petitioner's initial enrollment shall constitute a violation of probation unless the board or its designee agrees in writing to a later time for completion. Based on petitioner's performance in and evaluations from the assessment, education, and training, the program shall advise the board or its designee of its recommendation(s) for additional education, training, psychotherapy and other measures necessary to ensure that petitioner can practice medicine safely. Petitioner shall comply with program recommendations. At the completion of the program, petitioner shall submit to a final evaluation. The program shall provide the results of the evaluation to the board or its designee. The professional boundaries program shall be at petitioner's expense and shall be in addition to the Continuing Medical Education requirements for renewal of his license.

The program has the authority to determine whether or not petitioner successfully completed the program.

A professional boundaries course taken after the acts that gave rise to the charges in the Accusation, but prior to the effective date of this Decision may, in the sole discretion of the board or its designee, be accepted towards the fulfillment of this condition if the course would have been approved by the board or its designee had the course been taken after the effective date of this Decision.

If petitioner fails to complete the program within the designated time period, petitioner shall cease the practice of medicine within three calendar days after being notified by the board or its designee in writing that petitioner failed to complete the program.

F. Professionalism Program (Ethics Course)

Within 60 calendar days of the effective date of this Decision, petitioner shall enroll in a professionalism program, that meets the requirements of Title 16, California Code of Regulations, section

1358.1. Petitioner shall participate in and successfully complete that program. Petitioner shall provide any information and documents that the program may deem pertinent. Petitioner shall successfully complete the classroom component of the program not later than six months after petitioner's initial enrollment, and the longitudinal component of the program not later than the time specified by the program, but no later than one year after attending the classroom component. The professionalism program shall be at petitioner's expense and shall be in addition to the CME requirements for renewal of his Certificate.

A professionalism program taken after the acts that gave rise to the charges in the Accusation but prior to the effective date of the Decision may, in the sole discretion of the board or its designee, be accepted towards the fulfillment of this condition if the program would have been approved by the board or its designee had the program been taken after the effective date of this Decision

Petitioner shall submit a certificate of successful completion to the board or its designee not later than 15 calendar days after successfully completing this Program or not later than 15 calendar days after the effective date of the Decision, whichever is later.

G. Monitoring – Practice/Computer/Behavior

Within 30 calendar days of the effective date of this Decision, petitioner shall submit to the board or its designee for prior approval as a practice monitor, the name and qualifications of one or more licensed physicians and surgeons whose licenses are valid and in good standing, and, preferably, who are American Board of Medical Specialties certified. A monitor shall have no prior or current business or personal relationship with petitioner, or other relationship that could reasonably be expected to compromise the ability of the monitor to render fair and unbiased reports to the board, including but not limited to, any form of bartering, shall be in petitioner's field of practice and must agree to serve as petitioner's monitor. Petitioner shall pay all monitoring costs.

The board or its designee shall provide the approved monitor with copies of the Decision (Petition for Reinstatement), Decision (Accusation), the Accusation, the Stipulation for Voluntary Suspension of License and a proposed monitoring plan. Included in the proposed monitoring plan shall be the plan (in conjunction with petitioner's employer) to monitor petitioner's behavior and computer. Within 15 calendar days of receipt of the foregoing documents, the monitor shall submit a signed statement that the monitor has read the Decision

(Petition for Reinstatement), Decision (Accusation), the Accusation and the Stipulation for Voluntary Suspension of License and fully understands the role of a monitor and agrees or disagrees with the proposed monitoring plan. If the monitor disagrees with the proposed monitoring plan, the monitor shall submit a revised monitoring plan with the signed statement for approval by the board or its designee. The revised monitoring plan shall include the plan (in conjunction with petitioner's employer) to monitor petitioner's behavior and computer.

Within 60 calendar days of satisfying the date of this Decision and continuing throughout probation, petitioner's practice (including computer and behavior) shall be monitored by the approved monitor. Petitioner shall make all records available for immediate inspection and copying on the premises by the monitor at all times during business hours and shall retain the records for the term of probation.

If petitioner fails to obtain approval of a monitor within 60 calendar days of the effective date of this Decision, petitioner shall receive a notification from the board or its designee to cease the practice of medicine within three calendar days after being so notified. Petitioner shall not resume the practice of medicine until a monitor is approved to provide monitoring responsibility.

The monitor shall submit a quarterly written report to the board or its designee which includes an evaluation of petitioner's performance, indicating whether petitioner's practices are within the standards of practice, whether there is any concern about his behavior or findings on his computer, whether petitioner is practicing medicine safely and billing appropriately. It shall be petitioner's sole responsibility to ensure that the monitor submits the quarterly written reports to the board or its designee within 10 calendar days after the end of the preceding quarter.

If the monitor resigns or is no longer available, within five calendar days of such resignation or unavailability, petitioner shall submit to the board or designee, for prior approval, the name and qualifications of a replacement monitor who will be assuming that responsibility within 15 calendar days. If petitioner fails to obtain approval of a replacement monitor within 30 calendar days of the resignation or unavailability of the monitor, petitioner shall receive a notification for the board or its designee to cease the practice of medicine. Within three calendar days after being so notified, petitioner shall cease the practice of medicine until a replacement monitor is approved and assumes monitoring responsibility.

H. **Solo Practice Prohibition**

Petitioner is prohibited from engaging in the solo practice of medicine. Prohibited solo practice includes, but is not limited to, a practice where: (1) petitioner merely shares office space with another physician but is not affiliated for purposes of providing patient care, or (2) petitioner is the sole physician practitioner at that location.

Petitioner may only practice in an environment in which his employer monitors petitioner's computer activity and his behavior and reports the foregoing in writing, under penalty of perjury, to petitioner's probation monitor on a quarterly basis. Petitioner must obtain written approval of the practice setting from the board or its designee prior to commencing the practice of medicine with the employer.

If petitioner fails to secure employment in an appropriate practice setting within 60 calendar days of satisfying the conditions precedent, petitioner shall receive a notification from the board or its designee to cease the practice of medicine within three calendar days after being so notified. Petitioner shall not resume the practice of medicine until an appropriate practice setting is established in compliance with this Decision.

During the probationary period, if petitioner's practice setting changes and he is no longer practicing in a setting in compliance with this Decision, petitioner shall notify the board or its designee within five days of the practice setting change. If petitioner does not secure employment in a setting in compliance with this Decision within 30 calendar days of the practice setting change, petitioner shall receive notification from the board or its designee to cease the practice of medicine within three calendar days after being so notified. Petitioner shall not resume practice until an appropriate practice setting is established.

I. **Education Course**

Within 60 calendar days of the effective date of this Decision, and on an annual basis thereafter, petitioner shall submit to the board or its designee, for its prior approval, educational program(s) or course(s) which shall not be less than 40 hours per year, for each year of probation. The educational program(s) or course(s) shall be in the area of addiction and shall be Category 1 certified. The educational program(s) or course(s) shall be at petitioner's expense and shall be in addition to the CME requirements for renewal of his certificate. Following the completion of each course, the board or its designee may

administer an examination to test petitioner's knowledge of the course. Within the time period designated by the board or its designee, petitioner shall provide proof of attendance for 65 hours of CME of which 40 hours were in satisfaction of this condition.

J. Notification

Within seven days of the effective date of this Decision, petitioner shall provide a true copy of the Decision (Petition for Reinstatement), Decision (Accusation), the Accusation and the Stipulation for Voluntary Surrender of License to the Chief of Staff or the Chief Executive Officer at every hospital where privileges or membership are extended to petitioner, at any other facility where petitioner engages in the practice of medicine, including all physician and locum tenens registries or other similar agencies, and to the Chief Executive Officer at every insurance carrier which extends malpractice insurance coverage to petitioner. Petitioner shall submit proof of compliance to the board or its designee within 15 calendar days.

This condition shall apply to any change(s) in hospitals, other facilities or insurance carrier.

K. Supervision of Physician Assistants and Advance Practice Nurses

During probation, petitioner is prohibited from supervising physician assistants and advance practice nurses.

L. Obey All Laws

Petitioner shall obey all federal, state and local laws, all rules governing the practice of medicine in California and remain in full compliance with any court ordered criminal probation, payments, and other orders.

M. Quarterly Declarations

Petitioner shall submit quarterly declarations under penalty of perjury on forms provided by the board, stating whether there has been compliance with all the conditions of probation.

Petitioner shall submit quarterly declarations not later than 10 calendar days after the end of the preceding quarter.

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N. General Probation Requirements

Compliance with Probation Unit

Petitioner shall comply with the board's probation unit.

Address Changes

At all times, petitioner shall keep the board informed of petitioner's business and residence addresses, email address (if available), and telephone number. Change of such addresses shall be immediately communicated in writing to the board or its designee. Under no circumstances shall a post office box serve as an address of record, except as allowed by Business and Professions Code section 2021, subdivision (b).

Place of Practice

Petitioner shall not engage in the practice of medicine in petitioner's or patient's place of residence, unless the patient resides in a skilled nursing facility or other similar licensed facility.

License Renewal

Petitioner shall maintain a current and renewed California physician's and surgeon's certificate.

Travel or Residence outside California

Petitioner shall inform the board or its designee, in writing, of travel to any areas outside the jurisdiction of California, which lasts, or is contemplated to last, more than 30 calendar days.

In the event petitioner leaves the State of California to reside or to practice, petitioner shall notify the board or its designee, in writing, 30 calendar days prior to the dates of departure and return.

O. Interview with the Board or its Designee

Petitioner shall be available in person upon request for interviews either at petitioner's place of business or at the probation unit office, with or without prior notice throughout the term of probation.

P. Non-practice While on Probation

Petitioner shall notify the board or its designee in writing within 15 calendar days of any period of non-practice lasting more than 30 calendar days and within 15 calendar days of petitioner's return to practice. Non-practice is defined as any period of time petitioner is not practicing medicine as defined in Business and Professions Code

sections 2051 and 2052 for at least 40 hours in a calendar month in direct patient care, clinical activity, teaching, or other activity as approved by the board or its designee. If petitioner resides in California and is considered to be in non-practice, petitioner shall comply with all terms and conditions of probation. All time spent in an intensive training program, which has been approved by the board or its designee, shall not be considered non-practice and does not relieve petitioner from complying with the terms and conditions of probation. Practicing medicine in another state of the United States or federal jurisdiction while on probation with the medical licensing authority of that state or jurisdiction shall not be considered non-practice. A board-ordered suspension of practice shall not be considered as a period of non-practice.

While on probation, if petitioner's period of non-practice exceeds 18 calendar months, petitioner shall complete the Federation of State Medical Boards' Special Purpose Examination, or, at the board's discretion, a clinical competence assessment program that meets the criteria of Condition 18 of the current version of the board's "Manual Model Disciplinary Orders and Disciplinary Guidelines" (Condition A herein) prior to resuming the practice of medicine.

Petitioner's period of non-practice while on probation shall not exceed two years.

Periods of non-practice will not apply to the reduction of the probationary term.

While residing outside of California, periods of non-practice shall relieve petitioner of the responsibility to comply with the probationary terms and conditions with the exception of this condition and the following terms and conditions of probation: Obey All Laws; General Probation Requirements; and Quarterly Declarations.

Q. Completion of Probation

Petitioner shall comply with all financial obligations (e.g., probation costs) not later than 120 calendar days prior to the completion of probation. Upon successful completion of probation, petitioner's certificate shall be fully restored.

R. Violation of Probation

Failure to fully comply with any term or condition of probation is a violation of probation. If petitioner violates probation in any respect,

after giving notice and the opportunity to be heard, the board may revoke probation and carry out the disciplinary order that was stayed. If an Accusation, and/or Petition to Revoke Probation, or an Interim Suspension Order is filed against petitioner during probation, the board shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

S. License Surrender

Following the effective date of this Decision, if petitioner ceases practice due to retirement or health reasons or is otherwise unable to satisfy the terms and conditions of probation, petitioner may request to surrender his license. The board reserves the right to evaluate petitioner's request and to exercise its discretion in determining whether or not to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances. Upon formal acceptance of the surrender, within 15 calendar days, petitioner shall deliver his wallet and wall certificate to the board or its designee, and petitioner shall no longer practice medicine. Petitioner will no longer be subject to the terms and conditions of probation. If petitioner re-applies for a medical license, the application shall be treated as a petition for reinstatement of a revoked certificate.

T. Probation Monitoring Costs

Petitioner shall pay the costs associated with probation monitoring each year of probation, as designated by the board, which may be adjusted on an annual basis. Such costs shall be payable to the Medical Board of California and shall be delivered to the board or its designee no later than January 31 of each calendar year.

DATED: February 22, 2018

DocuSigned by:
Vallera J. Johnson
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VALLERA J. JOHNSON
Administrative Law Judge
Office of Administrative Hearings